HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3532 OF 2005.

Ratan Ramchandra Thite,
age about 40 years,
Residing at Kendur,
Taluka: Shirur,
District: Pune. ..Petitioner.

Versus.

1.The State of Maharashtra.
2.The Special Land Acquisition
Officer Nod. 13, Pune,
District: Pune. ..Respondents.

Shri. N. B. Shah i/b Shri. Piyush Shah for the petitioner.

Shri. P.I. Khemani, AGP for the respondents- State.

CORAM: S.B.MHASE, J.

DATE: October 21, 2005.

ORAL JUDGMENT (PER S.B.MHASE,J.).

1. Heard. Rule, Rule made returnable forthwith by consent of both sides.

2. The land of the Petitioner, bearing Gat No.2482, situated at Kendur, Taluka : Shirur, District: Pune admeasuring 20-R, was acquired for the purpose of Minor Irrigation Tank. The notice under section 12(2) of the Land Acquisition Act was served on the Petitioner on 9.9.1991. Being aggrieved by the said award, the Petitioner filed a reference under section 18 of the Land Acquisition Act, which was transferred by the

Special Land Acquisition Officer to the District Court which, in turn, was transferred to 11th Ad-hoc Additional District Judge, Pune. The Land Reference was/is numbered as 548 of 1991. The land reference has been rejected on 21st July 2004 and, therefore, this writ petition.

3. It transpires, after going through the reasons given for rejection, that the reference was made in the year 1991, and since then it has been transferred to the various courts. Ultimately, in June 2004, it was transferred to the court of the 11th Ad-hoc Additional District Judge, Pune. The trial Court found that on earlier occasions, the Advocates and the parties were absent; and even the Government - respondent has failed to file a written statement. It is further observed that on the adjourned date of hearing before the 11th Ad-hoc Additional District Judge, the Advocates and parties were absent, and therefore, the court proceeded ex-parte. However, since there is no evidence and award of the Special Land Acquisition Officer, the trial court ultimately rejected the Land Acquisition Reference.

4. Learned counsel for the petitioner Shri. N. B. Shah, submits that on a perusal of the order and the reasoning one is at a loss to understand as to what is

the fault of the Petitioner. He submits that the fact that the matter has been transferred to the other court was not intimated to the petitioner and the court was under obligation to issue notice, at least to the Advocates of the parties. However, no such notices were issued and the Advocates were not knowing about the transfer of the reference to the 11th Ad-hoc Additional District Judge.

5. Learned AGP for the State - Shri.P.I.Khemani vehemently opposed for allowing this petition. He submits that the petitioners have purposely remained absent and thereby protracted the trial of the land reference, and that the trial Court is justified in rejecting the reference.

6. This Court finds much substance in the contention raised by learned Counsel for the appellant. It transpires that as a result of the transfer of the matter from one court to another court, probably, the Government Pleader was not aware as to in which Court the matter was pending and, thus failed to file a written statement. Above all, when matters are transferred from one court to another court, the court must issue notice to all concerned; minimum a notice to the Advocates of the parties intimating that the matter

has been transferred to this court must be issued. Such a procedure, as is reflected in the present case, is not adopted. Apart from this, the court which deals with the land acquisition matter shall take into consideration the fact that the land of the public has been compulsorily acquired for the public benefit/purpose and that the adequate compensation should be paid to him for the same. As the land of the petitioner is acquired is for a public purpose, he is the sufferer for the benefit of the public purpose. Therefore, instead of taking a mechanical and artificial approach, the court should have given an opportunity to the petitioners to appear in the proceedings by giving appropriate notice. That was necessary in the interests of justice and fair-play of the proceedings. Under these circumstances, this court is inclined to allow the writ petition in the interest of justice and fair play of the trial. However, this court is equally aware of the rate of interest which has been provided under the Land Acquisition Act and the protraction of the matter at the hands of the Petitioner may put the government in a prejudicial position.

. Therefore, we pass the following order.

: O R D E R :

(1) The Writ Petition is allowed.

(2) The order passed by the 11th Ad-hoc Additional District Judge, Pune in Land Reference No. 548 of 1991 is hereby set aside.

(3) The said land reference is restored to its original file.

(4) The Respondents are hereby given an opportunity to file their written statement within a period of two months from today, i.e., on or before 21st December 2005.

(5) It is further directed that the Petitioner shall file documents, and a list of witneeses on or before 13th January 2006.

(6) After giving an opportunity to both sides to lead evidence and to cross examine the witnesses, the trial court shall deliver the judgment in the matter on or before 20th February 2006.

(7) The Parties shall co-operate with the trial court for speedy disposal of the matter.

(8) Rule made absolute accordingly.

(9) All concerned to act on an authenticated copy of this order.

(S.B.MHASE, J.)

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